

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,)	CR. 11-50059-JLV
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
WENDELL ALBERT YELLOW)	
BULL,)	
)	
Defendant.)	

On October 26, 2011, defendant Wendell Albert Yellow Bull was convicted by a jury of assault resulting in serious bodily injury in violation of 18 U.S.C. § 113(a)(6). (Docket 53). On January 20, 2012, the court sentenced Mr. Yellow Bull to 60 months incarceration. (Docket 64). Mr. Yellow Bull filed three “petitions for redress of grievances.” (Dockets 75, 77, 78). In each petition, Mr. Yellow Bull claims his sentence was unlawfully enhanced in violation of Apprendi v. New Jersey, 530 U.S. 466 (2000). *Id.* “Where a *maximum* sentence is at issue, Apprendi means that a judge who *wishes* to impose a higher sentence cannot do so unless a jury finds the requisite statutory factual predicate.” Alleyne v. United States, 133 S. Ct. 2151, 2167 (2013) (emphasis in original).

A review of the presentence report discloses the following calculations:

Base Offense Level: The guideline for 18 U.S.C. § 113(a)(6) offenses is found in USSG §2A2.2 of the guidelines. Pursuant to that section, the base offense level is 14. USSG §2A2.2.

Specific Offense Characteristic: Pursuant to USSG §2A2.2(b)(2)(B), if a dangerous weapon (including a firearm) was otherwise used, increase by 4 levels. +4

Specific Offense Characteristic: Pursuant to USSG §2A2.2(b)(3)(C), if the victim sustained permanent or life-threatening bodily injury, 7 levels are added. However, the cumulative adjustments from applications of subdivisions (2) and (3) shall not exceed 10 levels. Therefore, only 6 levels are added, pursuant to USSG §2A2.2(b)(3)(C). +6

Adjusted Offense Level (Subtotal): 24

Acceptance of Responsibility: As of completion of the presentence investigation, the defendant has not clearly demonstrated acceptance of responsibility for the offense. USSG §3E1.1. 0

Total Offense Level: 24

Based upon a total offense level of 24 and a criminal history category of II, the guideline imprisonment range is 57 months to 71 months.

The 60-month sentence imposed is a guideline sentence, below the 10-year maximum sentence established by 18 U.S.C. § 113(a)(6), and is not subject to the objections to enhancement asserted by Mr. Yellow Bull. According, it is hereby

ORDERED that defendant's motions (Dockets 75, 77, 78) are denied.

Dated February 21, 2014.

BY THE COURT:

/s/ Jeffrey L. Viken

JEFFREY L. VIKEN
CHIEF JUDGE